

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9219 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRAGNESH V VAGHELA

Versus

CONTROLLER OF EXAMINATION

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Appearance:

MR P.M.RAVAL WITH HARIN P RAVAL for Petitioner

MR JR NANAVATI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/12/98

ORAL JUDGEMENT

1. Rule. Mr.J.R.Nanavaty waives service of rule on behalf of respondents No.1 & 4. At the request of Mr.P.M.Raval respondent Nos 2 & 3 are deleted. With the consent of Learned advocates for the parties matter is finally taken up for final hearing.

2. The petitioner by way of this petition challenges the communication, dated 8.10.98 at Annexure "D", Notification, dated 8.10.98 at Annexure "D1" and communication, dated 13.10.98 at Annexure "E".

3. The petitioner passed 12th Standard Higher Secondary Examination of Science Stream in March, 1996 by securing 523 out of 650 marks (80.46%). It appears that the petitioner though belongs to SC and is entitled to secure admission on the seats reserved for Scheduled Caste but the petitioner did not avail of the reservation and was admitted on merit on the basis of marks obtained by him in M.P.Shah Medical College, Jamnagar in October, 1996. The petitioner appeared in First M.B.B.S. examination in April/May, 1998 held by the Saurashtra University. The result of the said examination was kept in abeyance on 8th July, 1998 when declared in local newspaper. However, on 16th July, 1998 after re-checking the marks the petitioner's result was declared and he was declared passed. It appears that on 21st July, 1998 Mrs.Smita Patel (Mrs. Gadhia) filed FIR being Cri.Reg.No.II-155/98 before the Police Station Officer, City B.Division, Jamnagar against the petitioner and his father for the alleged offences U/secs 504, 506(2) and 114 IPC and in that connection the petitioner as well as his father were arrested on 23rd July, 1998. The petitioner and his father obtained bail from the trial court on 24th July, 1998. It appears that Dr.B.D.Gupta, Chairman, Inquiry Committee and Professor of Head of Dept.of Forensic Medicine asked the petitioner as well as his father to remain present on 3.8.98 before the Inquiry Committee. However, on 8.10.98 the petitioner received communication from the Controller of Examinations informing the petitioner that his result which was withheld on 8th July, 1998 and declared on 16th July, 1998 was again withheld by the University vide its Notification No.R-37-B dated 8th October, 1998 on the ground that after the declaration of the result the petitioner has committed misconduct towards the Tutor-Mrs.Smita M.Patel and therefore the petitioner was called upon to return the original mark-sheet to the office of the Dean of M.P.Shah Medical College. One more communication, dated 13.10.98 was received by the petitioner from the Dean informing the petitioner that pursuant to the notification of the Controller of Examinations, the petitioner's name from roll of First Semester of Second MBBS was deleted and since the petitioner's result was withheld the petitioner was continued as a repeater of First MBBS. As stated above, the petitioner has challenged both the aforesaid communications in this petition.

4. Having heard the Learned Advocate for petitioner as well as Mr.J.R.Nanavaty for respondent Nos 1 & 4 it is clear that the petitioner was not heard before the impugned decisions were taken which were communicated to him. Therefore, the impugned decisions are against the principles of natural justice inasmuch as the petitioner was not afforded reasonable opportunity of hearing before the punitive decisions were taken against him. In view of this the petition is required to be allowed and it is held that the impugned decisions were in violation of principles of natural justice as same were passed without hearing the petitioner. In the result the petition is allowed. Communciation, Notification dated 8.10.98 and 13.10.98 at annexures D, D1 and E respectively are quashed and set aside and the respondents are directed to take appropriate decision in accordance with law. Rule is made absolute accordingly with no order as to costs. DS permitted.

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